



0000003595

216

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

COMMISSIONERS

DOCKETED

JUL 12 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

NR

IN THE MATTER OF THE APPLICATION OF
BCE NEXXIA CORPORATION FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE FACILITIES-BASED
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES IN ARIZONA AND FOR
COMPETITIVE CLASSIFICATION OF ITS
SERVICES.

DOCKET NO. T-04200A-03-0550

DECISION NO. 67113

OPINION AND ORDER

DATE OF HEARING: April 22, 2004

PLACE OF HEARING: Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE: Philip J. Dion III
Amanda Pope

APPEARANCES: Michael Patten, ROSHKA, HEYMAN AND DEWULF,
on behalf of BCE Nexxia Corporation; and

Lisa Vandenberg, Staff Attorney, Legal Division, on
behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On August 5, 2003, BCE Nexxia Corporation ("BCE" or "Applicant") filed with the
Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
competitive facilities-based interexchange telecommunications services statewide.

2. BCE is a Delaware corporation, authorized to do business in Arizona. BCE is a wholly
owned subsidiary of Bell Canada Enterprises, Inc. which is a Canadian corporation.

3. On October 21, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report, which recommended approval of the application and included a number of additional

1 recommendations.

2 4. On February 4, 2004, a Procedural Order was issued that set this matter for a hearing
3 on April 22, 2004.

4 5. On March 5, 2004, Applicant docketed a Notice of Filing of Affidavits of Publication
5 that comply with Commission rules.

6 6. On April 22, 2004, a full public hearing in this matter was held as scheduled.
7 Applicant appeared telephonically and was represented by counsel. Staff appeared and was
8 represented by counsel. The hearing was conducted before a duly authorized Administrative Law
9 Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the
10 Administrative Law Judge took the matter under advisement and informed the parties that a
11 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

12 7. On June 3, 2004, BCE filed a copy of its financial statements for 2003 as requested by
13 the Administrative Law Judge.

14 8. On June 18, 2004, Staff filed a Supplemental Staff Report in response to BCE's June
15 3, 2004 filing, which summarizes the updated financial information and concludes that such
16 information is substantially the same as that contained in BCE's original application and therefore,
17 does not warrant amendment to the recommendations contained in the Staff Report docketed October
18 21, 2003.

19 9. Applicant has the technical capability to provide the services that are proposed in its
20 application.

21 10. Currently there are several incumbent providers of interexchange services in the
22 service territory requested by Applicant, and numerous other entities have been authorized to provide
23 competitive local and interexchange services in all or portions of that territory.

24 11. It is appropriate to classify all of Applicant's authorized services as competitive.

25 12. The Staff Report stated that Applicant has no market power and the reasonableness of
26 its rates would be evaluated in a market with numerous competitors.

27 13. According to the Staff Report, BCE submitted the audited consolidated financial
28 statements of its parent, Bell Canada Enterprises, for the twelve month period ending January 31,

2003. These financial statements list total assets in excess of \$39 billion, total equity in excess of \$13 billion, and net income in excess of \$1.8 billion.

14. At the hearing, BCE testified that it intends to enter into interconnection agreements for access facilities to be used in terminating and originating traffic to large customers for data service needs. Accordingly, we will require BCE to file any interconnection agreements that must be filed pursuant to the Federal Telecom Act with the Commission.

15. The Application states that BCE does not collect advances and deposits from its customers.

16. Staff recommends that BCE's application for a Certificate to provide competitive facilities-based interexchange telecommunications services be granted subject to the following conditions:

- (a) that, unless it provides services solely through the use of its own facilities, Applicant be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer interexchange exchange service;
- (b) Applicant should be ordered to comply with all Commission rules, orders and other requirements relevant to the provision of intrastate telecommunications service;
- (c) Applicant should be ordered to maintain its accounts and records as required by the Commission;
- (d) Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (e) Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (f) Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
- (g) Applicant should be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;
- (h) Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission
- (i) Applicant should be ordered to notify the Commission immediately upon

changes to the Applicant's name, address and telephone number;

- (j) If at some future date, the Applicant wants to collect from its interexchange customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the Decision in this docket and must explain the applicant's plans for procuring a performance bond;
- (k) Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
- (l) The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and
- (m) In the event that Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be effective (actual) price to be charged for the service as well as the service's maximum rate;
- (n) BCE be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision; and
- (o) If any of the above timeframes are not met, that BCE's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

15. Staff's recommendations, as set forth herein, are reasonable with one exception. We disagree with Staff's recommendation as set forth in Findings of Fact No. 15 (j) as we believe that the procurement of a performance bond is in the public interest and that such a requirement should not be omitted. The performance bond requirement is intended not only as a safeguard for customers of companies that collect advances, deposits or prepayments, but also provides a non-subjective and non-discriminatory means of protecting customers from the inconvenience associated with potential future insolvency of the telecommunications provider. We do not believe that a change in our current performance bond policy is necessary at this time.

16. In order to protect BCE's customers, we find that:

- (a) BCE should be ordered to procure a performance bond equal to \$100,000; and
- (b) BCE should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based interexchange telecommunications services in Arizona as conditioned herein.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted with the exception of the recommendation set forth in Findings of Fact No. 15 (j). Furthermore, we will require BCE to procure a performance bond related to the provision of facilities-based interexchange service.

10. BCE's competitive rates, as set forth in its proposed tariffs, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of BCE Nexxia Corporation for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon BCE Nexxia Corporation's timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that BCE Nexxia Corporation shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

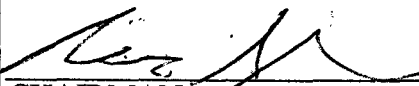
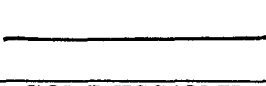

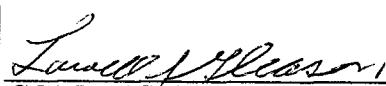

IT IS FURTHER ORDERED that BCE Nexxia Corporation shall procure a performance bond equal to \$100,000, and shall file proof of procurement of the bond with the Director of the Utilities Division, the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service.

IT IS FURTHER ORDERED that BCE Nexxia Corporation shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law, with the exception discussed hereinabove with respect to requirements related to the future procurement of a performance bond as set forth in Findings of Fact No. 15 (j).

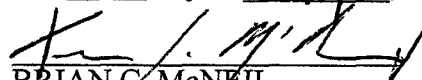
IT IS FURTHER ORDERED that if BCE Nexxia Corporation fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

		
CHAIRMAN	COMMISSIONER	COMMISSIONER
		
COMMISSIONER	COMMISSIONER	

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 12th day of July, 2004.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AKP:mlj

1 SERVICE LIST FOR: BCE NEXXIA CORPORATION

2 DOCKET NO.: T-04200A-03-0550

3 Michael Patten
4 ROSHKA HEYMAN & DEWULF
5 400 E. Van Buren, Ste. 800
Phoenix, AZ 85004-2262

6 Christopher Kempley, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

9 Ernest Johnson, Director
10 Utilities Division
11 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28